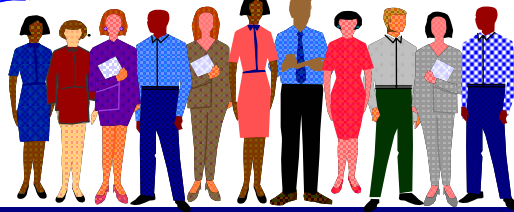


Personnel Issues & You



UPPS Newsletter 2004-5

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DEPARTMENT OF PERSONNEL STAFF CHANGES

The Department of Personnel has recently experienced some staff changes. One of those changes was the retirement of Lisa Wilhoite in the Commissioner's office. Stephany Ivers is now in the Commissioner's Office as secretary to Commissioner Ramsey.

Carl Felix is the Executive Director of the Office for Personnel Administration. Carl's former position was Executive Director of the Office for Public Employee Health Insurance. Also, in the Office for Personnel Administration, Mark White is the Division Director for the Division of Staffing Services, and Paul Herberg is the Division Director for the Division of Employee Records. Mark came from the Secretary of State's Office, and Paul came from the Department of Parks.

Rick Deason is the Executive Director for the Office for Employee Relations. Rick was previously the Director of Public Works with the City of Hopkinsville and also has state government service. Also in the Office for Employee Relations, Bill Patrick is the Division Director for the Division of Employee Benefits and Tim Harmon is the Division Director for the Division of Communications and Recognition. Bill most recently came from the private sector but has a total of nine years of state government service. Tim Harmon is new to state government from the private sector.

Esteva Caise Draggs is the Executive Director for the Office for Public Employee Health Insurance. She comes to state government from Kentucky State University where she was Director of Development.

A WORD FROM THE PROCESSING/FILES BRANCH

E61 and G61-G62 are no longer valid Nature of Action Combinations. Reversions (E61) are close of business, and pay type changes are beginning of business. The pay type change (G61-G62) P1 should be done the following day after the revert. Also, backup documents sent to Personnel Processing should have a social security number and a position number listed somewhere on the document. This is very important because due to the reorganization, the Processing staff needs to know which agency the documents deal with so they can get it to the correct staff person assigned to that agency.

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Money Market Accounts and ACH

Many employees are under the impression that money market accounts they hold are savings accounts. While money market accounts are interest bearing and are often used like the savings accounts, they are technically checking accounts. This causes a problem when the employee sets up a direct deposit as savings to a money market account.

When this happens, the funds fail to post properly when they reach the receiving financial institution. The receiving institution then has to hand post the funds into the employee's desired account. A notification of change report is sent by the employee's financial institution to Yvonne Mahoney informing her that the transaction code is wrong and that the account being used for savings EFT is actually a checking account. At this point, the employee is not aware of a problem because the financial institution is posting the funds manually for them until the problem is resolved. However, if the problem is not fixed by either changing the account to a valid savings account or by directing all of the employee's net to a valid checking account via deduction 70, then the bank may stop posting the funds and begin to reject and return them to the issuing bank (Farmer's).

If you are notified that a notification of change report has been received for one of your employees indicating that the transaction code for their account is wrong and a checking account is being used for savings direct deposit, please inform the employee of the situation. The employee can then either provide a valid savings account or have all of his or her net directed to checking. With either choice, Yvonne Mahoney can update the change directly to the system without the transaction having to go through the prenote process again.

Board and Court Ordered Lump-Sum Award Payments

The majority of Board and Court Ordered payments are treated as wages: they are subject to appropriate tax withholding, offsets, and other adjustments prior to the issuance of a net check. However, sometimes an order directs the agency to pay a check for a specific amount—a lump-sum award—to the employee or former employee. In those cases, the payments are not for wages and should not be treated as wage payments.

When an order directs an agency to make a lump-sum award payment, the IRS does not consider it to be wages. Instead, it is treated as a 1099 reportable item. Consequently, the payment cannot be processed via SAS-27. SAS-27s are used to process wage-related payments and the employer is responsible for treating it as taxable as appropriate and reflecting it on the W-2. SAS-27s cannot generate 1099s. Therefore, lump-sum awards should be processed via MARS so that a 1099 is generated for the payment and it is not included in the W-2. Lump-sum settlement awards from Board or Court orders should not be updated to the employee's master file.

Lump-sum award payments resulting from Board and Court ordered actions should not be confused with any lump-sum awards associated with employment and made to employees via P-1 in the Personnel system, such as Educational Achievement Awards or Employee Suggestion System Awards. Those awards are processed through the system and subject to taxation.

If you have any questions regarding Board and Court orders, or determining if an order is awarding a lump-sum, or if you need assistance in processing one, please contact the payroll branch.

Invalid Health Insurance Deductions Report on Document Direct

Starting in June, the Payroll Branch will be putting the Invalid Health Insurance Deductions Report out on Document Direct. The name of the report will be PERUPPIF Invalid Health Insurance Report. We will NO longer be sending the report by mail; instead you will be receiving an email each month as a reminder to check the report out on Document Direct. Shannan Goodrich will attach a memo in the email (just like the one attached to the invalid that was being mailed) that will list the pay periods she has money for and the date that you will have to respond to in order to get money back before it is wired to the carriers. Please, remember to TYPE the Invalid Health Insurance Refund Request Form and send to Shannan Goodrich by email, fax or mail. If you do not have access to Document Direct, you will need to contact your IT people and have them set it up for you. If you have any questions, please contact Shannan Goodrich at 502-564-6883, ext. 4119.

FLSA Changes

The U.S. Department of Labor (DOL) recently released its long-awaited final regulations on the "white-collar" exemptions to federal overtime pay requirements. Although national news reports have concentrated on the concessions that the administration made in allowing white-collar workers who earned up to \$100,000 to be eligible for overtime pay, the regulations still represent a victory for employers, who have wanted certainty and security in coping with the complex and confusing overtime law. The main points of the regulations:

- (1) clarify and simplify the old long and short tests for determining whether an employee meets a white-collar exemption;
- (2) raise the minimum salary requirement for exempt employees from as little as \$8,060 per year, or \$155 per week, to \$23,660, or about \$455 per week;
- (3) allow employers to deny overtime to "highly compensated" employees who make at least \$100,000 per year and have minimal exempt duties or responsibilities;
- (4) allow employers to suspend an exempt employee for misconduct in one-day increments. This would obviate the moratorium that the Department of Personnel declared on suspensions of less than 5 days for exempt employees;
- (5) provide a new "safe harbor" making it easier for employers to fix improper deductions from an exempt employee's pay; and
- (6) amend the educational requirements for employees to be classified as exempt professionals.

The new regulations cover a host of other overtime issues, including stronger overtime protections for blue-collar workers, police and fire officers, emergency medical technicians and paramedics, and licensed practical nurses. The new regulations will become effective in 120 days. Additional alerts will be issued as more information becomes available.

Below is a fact sheet explaining in greater detail the changes and the affect they will have.

FairPay Fact Sheet by Exemption

Fact Sheet #17A: Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information on the exemption from minimum wage and overtime pay provided by Section 13(a)(1) of the Fair Labor Standards Act as defined by Regulations, 29 CFR [Part 541](#).

The FLSA requires that most employees in the United States be paid at least the Federal minimum wage for all hours worked and overtime pay at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek.

However, Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide [executive](#), [administrative](#), [professional](#) and [outside sales](#) employees. Section 13(a)(1) and Section 13(a)(17) also exempt certain [computer](#) employees. To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than \$455 per week. Job titles do not determine exempt status. In order for an exemption to apply, an employee's specific job duties and salary must meet all the requirements of the Department's regulations.

See other fact sheets in this series for more detailed information on the specific exemptions for [executive](#), [administrative](#), [professional](#), [computer](#), and [outside sales](#) employees, and for more information on the [salary basis](#) requirement.

Executive Exemption

- To qualify for the executive employee exemption, all of the following tests must be met:
- The employee must be compensated on a [salary basis](#) (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and

- The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

Administrative Exemption

- To qualify for the administrative employee exemption, all of the following tests must be met:
- The employee must be compensated on a [salary](#) or fee basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and
- The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

Professional Exemption

- To qualify for the **learned professional** employee exemption, all of the following tests must be met:
- The employee must be compensated on a [salary](#) or fee basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;
- The advanced knowledge must be in a field of science or learning; and
- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.
- To qualify for the **creative professional** employee exemption, all of the following tests must be met:
- The employee must be compensated on a [salary](#) or fee basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

Computer Employee Exemption

- To qualify for the computer employee exemption, the following tests must be met:
- The employee must be compensated **either** on a [salary](#) or fee basis (as defined in the regulations) at a rate not less than \$455 per week **or**, if compensated on an hourly basis, at a rate not less than \$27.63 an hour;
- The employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below;
- The employee's primary duty must consist of:
 - 1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
 - 2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
 - 3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
 - 4) A combination of the aforementioned duties, the performance of which requires the same level of skills.

Outside Sales Exemption

- To qualify for the outside sales employee exemption, all of the following tests must be met:
- The employee's primary duty must be making sales (as defined in the FLSA), or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
- The employee must be customarily and regularly engaged away from the employer's place or places of business.

Highly Compensated Employees

Highly compensated employees performing office or non-manual work and paid total annual compensation of \$100,000 or more (which must include at least \$455 per week paid on a salary or fee basis) are exempt from the FLSA if they customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the standard tests for exemption.

Blue Collar Workers

The exemptions provided by FLSA Section 13(a)(1) apply only to "white collar" employees who meet the salary and duties tests set forth in the Part 541 regulations. The exemptions do not apply to manual laborers or other "blue collar" workers who perform work involving repetitive operations with their hands, physical skill and energy. FLSA-covered, non-management employees in production, maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron

workers, craftsmen, operating engineers, longshoremen, construction workers and laborers are entitled to minimum wage and overtime premium pay under the FLSA, and are not exempt under the Part 541 regulations no matter how highly paid they might be.

Police, Firefighters, Paramedics & Other First Responders

The exemptions also do not apply to police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, investigators, inspectors, correctional officers, parole or probation officers, park rangers, firefighters, paramedics, emergency medical technicians, ambulance personnel, rescue workers, hazardous materials workers and similar employees, regardless of rank or pay level, who perform work such as preventing, controlling or extinguishing fires of any type; rescuing fire, crime or accident victims; preventing or detecting crimes; conducting investigations or inspections for violations of law; performing surveillance; pursuing, restraining and apprehending suspects; detaining or supervising suspected and convicted criminals, including those on probation or parole; interviewing witnesses; interrogating and fingerprinting suspects; preparing investigative reports; or other similar work.

Other Laws & Collective Bargaining Agreements

The FLSA provides minimum standards that may be exceeded, but cannot be waived or reduced. Employers must comply, for example, with any Federal, State or municipal laws, regulations or ordinances establishing a higher minimum wage or lower maximum workweek than those established under the FLSA. Similarly, employers may, on their own initiative or under a collective bargaining agreement, provide a higher wage, shorter work week, or higher overtime premium than provided under the FLSA. While collective bargaining agreements cannot waive or reduce FLSA protections, nothing in the FLSA or the Part 541 regulation relieves employers from their contractual obligations under such bargaining agreements.

Where to Obtain Additional Information

The Department of Labor provides this information to enhance public access to information on its programs. This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations. For more information regarding the FLSA, visit the Wage and Hour Division's web site at www.wagehour.dol.gov or call our toll-free help line, available from 8 a.m. to 5 p.m. in your time zone, at 1-866-4US-WAGE (1-866-487-9243).

Copies of Wage and Hour publications also may be obtained from any office of the Wage and Hour Division. To locate the nearest Wage and Hour Division office, telephone the toll-free help line or visit our web site for a complete listing of offices.

When the state laws differ from the federal FLSA, an employer must comply with the standard most protective to employees. Links to your state labor department can be found at www.dol.gov/esa/contacts/state_of.htm.